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IN THE
COURT OF APPEALS OF INDIANA

GORDON NORTHRUP,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-0803-CR-173
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-9908-CF-76

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Gordon Northrup appeals his forty-eight year sentence for Class B felony attempted child molesting with an habitual offender enhancement. We affirm.

Issue

Northrup raises one issue on appeal, which is whether the trial court abused its discretion in re-sentencing him following the reversal and remand of his original sentence.

Facts

Northrup attempted to molest ten-year-old S.B. in March of 1999 when he pressed his penis against her vagina. On August 5, 1999, the State charged him with Class A felony attempted child molesting, Class B felony attempted child molesting, and two counts of Class C felony child molesting. On February 25, 2000, Northrup pled guilty to Class B felony attempted child molesting and to being an habitual offender. On March 22, 2000, the trial court sentenced Northrup to eighteen years executed with a thirty-year enhancement for being an habitual offender, for a total sentence of forty-eight years. In sentencing Northrup, the trial court found that the following circumstances were aggravating factors:

> [T]he defendant has a history of juvenile and criminal activity, the defendant has recently violated the conditions of his probation, the victim was only ten years of age and the defendant's actions have caused a devastating effect on the victim and her family, the defendant had a sexually transmitted disease and knew the risk of infecting the victim, there have been prior attempts at rehabilitation that have been unsuccessful, and the defendant is in need of correctional or

> rehabilitative treatment that can best be provided by his commitment to a penal facility.

App. p. 45. Northrup filed a belated appeal on May 19, 2006. He contended that the trial court erred by considering aggravators that were not found by a jury as required by Blakely v. Washington, 542 U.S. 296 (2004). We agreed to some extent and held:

> In sum, with respect to Northrup's sentencing claims, we have found that the trial court erred upon Blakely grounds in considering as an aggravator the fact that Northrup knew he had a sexually transmitted disease and understood the risk of infecting the victim. We have also determined that the trial court should not have attributed additional aggravating weight to the factors of "failure to rehabilitate" and "need for correctional treatment of penal facility," both of which were derivative of the separate aggravator of Northrup's criminal history. Further, while we cannot say that the victim's age of ten may not be considered as a separate aggravator, this finding should be supported by specific facts and reasons indicating why such age contributed to a particularly egregious form of attempted child molesting. Accordingly, we instruct the trial court upon remand to resentence Northrup in a manner not inconsistent with this opinion.

Northrup v. State, No. 79A02-0605-CR-413, slip op. at 6 (Ind. Ct. App. May 24, 2007). The trial court held a re-sentencing hearing on January 17, 2008. The trial court found two aggravators: Northrup's criminal history, including the fact that he was on probation at the time of the offense, and the fact that the victim recommended an aggravated sentence. After finding these two aggravators, the trial court again sentenced Northrup to forty-eight years. This appeal followed.

Analysis

Northrup argues that the trial court abused its discretion during the re-sentencing because the elimination of three aggravators, pursuant to this court's first decision, should

have resulted in a lesser sentence.[1] Northrup committed this crime before our legislature enacted the advisory sentencing scheme, so the trial court's sentencing decision is reviewed for an abuse of discretion. White v. State, 847 N.E.2d 1043, 1045 (Ind. Ct. App. 2006), trans. denied. If a trial court used aggravating or mitigating circumstances to modify the presumptive sentence, the trial court must have: (1) identified all significant mitigating and aggravating circumstances; (2) stated the specific reason why each circumstance is determined to be mitigating or aggravating; and (3) articulated its evaluation and balancing of the circumstances. Id. A trial court's assessment of the proper weight of mitigating and aggravating circumstances is entitled to great deference and will be set aside only on a showing of a manifest abuse of discretion. Id.

Northrup is correct in his assertion that the recommendation of the victim is not a valid aggravating factor. Though these recommendations can be used or considered to assist a trial court in making a sentencing decision, our supreme court has held that they are not aggravating factors as contemplated by the sentencing statutes. Hawkins v. State, 748 N.E.2d 362, 363 (Ind. 2001). Even without this aggravator, however, we find that the trial court did not abuse its discretion in relying on Northrup's criminal history to sentence him to forty-eight years. "[W]hen a sentencing court applies proper aggravating circumstances along with improper aggravators, a sentence enhancement may still be upheld." Id. at 364.

[1] Northrup does not request a review of the appropriateness of his sentence under Indiana Appellate Rule 7(B).

Unfortunately, neither party included Northrup's pre-sentence investigation report in the record here for a detailed account of his criminal history. This omission, however, is not entirely problematic because Northrup admitted to five prior felony convictions during his guilty plea hearing. See Northrup, slip op. at 3 n.3. The State also recounted the basics of his criminal history during the first sentencing hearing. He had seventeen contacts with the juvenile system and eight adult convictions. It appears Northrup's most serious previous felony was an October 31, 1994 conviction for confinement resulting in serious bodily injury with a fifteen-year sentence. He had felony convictions for theft twice in 1985, 1992, and in 1995. He also had a 1992 felony conviction for possession of a handgun without a license. Other convictions included leaving the scene of an accident, possession of marijuana, operating while intoxicated, receiving stolen property, and operating while suspended.

Our supreme court has established that a defendant's criminal history "is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). Though we do not have details of the 1994 confinement conviction, it was serious enough to warrant a fifteen-year sentence and was close in time to the instant offense. Although Northrup was only thirty-four years old at the time of his guilty plea, he had already accumulated five felony convictions. He was also on probation when he committed the instant offense. Northrup's criminal history was a serious aggravator. Even a single aggravator can be enough to warrant an enhanced sentence. Collins v.

State, 740 N.E.2d 143, 147 (Ind. Ct. App. 2000). The trial court did not abuse its discretion when re-sentencing Northrup, and his criminal history supports the enhanced sentence.

Conclusion

The trial court did not abuse its discretion in re-sentencing Northrup to forty-eight years following the reversal and remand of his first sentence. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.